

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO

*State of Nevada v. American Home Prods.
Corp., et al.,*
D. Nev. Cause No. CV-N-02-0202-ECR

) MDL No. 1456
)
) Civil Action No.
) 01-CV-12257-PBS
)

) Judge Patti B. Saris
)

) **AFFIDAVIT OF**
) **SAMUEL N. LONERGAN**
)

FILED UNDER SEAL

STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

SAMUEL LONERGAN, being duly sworn, deposes and says:

1. I am an associate with the law firm of Kaye Scholer LLP, which represents Novartis Pharmaceuticals Corporation ("NPC") in the above-captioned case. I submit this affidavit in support of NPC's motion for summary judgment in *State of Nevada v. American Home Products*.

A. Nevada Medicaid's Reimbursement of Aredia and Miacalcin Injection

2. Attached hereto as Exhibit 1 is a spreadsheet created at my direction exhibiting true and accurate quarterly sums of Nevada Medicaid's reimbursements for the NPC drugs Aredia and Miacalcin Injection from January 1, 1997, through June 30, 2003. The quarterly sums contained in Exhibit 1 are based on drug utilization data reported by Nevada Medicaid to the Centers for Medicare and Medicaid Services ("CMS"). CMS makes this information public on its website, which provides utilization data for outpatient drugs paid for by all State Medicaid agencies since the inception of the Medicaid drug rebate program in 1991 ("the CMS Data"). This data is

available at <http://www.cms.hhs.gov/MedicaidDrugRebateProgram/SDUD/list.asp#TopOfPage>.

3. An explanation of the data that Exhibit 1 contains is as follows. Each row of Exhibit 1, save the header row, reflects the total amount that Nevada Medicaid reimbursed for either Aredia or Miacalcin Injection during an annual quarter. The column entitled, "State" identifies the state that paid the reimbursement to Providers. The column entitled, "NDC" identifies the National Drug Code ("NDC") for the reimbursed drug. An NDC is a unique, 10-digit number that identifies the labeler, product, and package size for a drug. The NDC for Miacalcin Injection is 00078-0149-23, and the NDCs for Aredia are 00083-2601-04 and 00083-2609-01. The column entitled, "Drug Name" identifies the drug by name and package size. The column entitled, "Year" identifies the year of the reimbursement. The column entitled, "Quarter" identifies the annual quarter, of the corresponding year, of the reimbursement. By way of example, a "1" in this column means that the reimbursement was paid in the first annual quarter of the corresponding year, a "2" means that the reimbursement was paid in the second annual quarter of the corresponding year, and so on. The column entitled, "Total Reimbursed Amount" identifies the total dollar amount that Nevada Medicaid paid in reimbursement for the drug during the corresponding quarter.

4. Nevada Medicaid's total dollar reimbursement for Aredia was \$1,320.13 during the period January 1, 1997, through June 30, 2003. Nevada Medicaid's total dollar reimbursement for Miacalcin Injection was \$14,363.68 during the period January 1, 1997, through June 30, 2003. These figures were arrived at by totaling Nevada Medicaid's total quarterly dollar reimbursements, based on the CMS Data, for

Aredia and Miacalcin Injection (*i.e.*, the figures in the “Total Reimbursed Amount” column of Exhibit 1).

B. NPC Rebates to Nevada Medicaid

5. Attached hereto as Exhibit 2 is a spreadsheet created at my direction exhibiting true and accurate quarterly rebate amounts paid by NPC to Nevada Medicaid from January 1, 1997, through June 30, 2003, for the drugs at issue here. The quarterly amounts contained in Exhibit 2 are based on rebate data produced by NPC to the state of Nevada (“Plaintiff”) in connection with the above-referenced case.

6. An explanation of the data that Exhibit 2 contains is as follows. Each row of Exhibit 2, save the header row, reflects the rebate amount paid by NPC to Nevada Medicaid for a particular drug during an annual quarter. The column entitled, “State” identifies the state receiving the rebate. The column entitled, “Program” identifies the specific state program receiving the rebate. “Medicaid” indicates that Nevada Medicaid received the rebate. The column entitled, “NDC” identifies the NDC for the rebated drug. The column entitled, “Drug Name” identifies the rebated drug by brand name and package size. The column entitled, “Year/Quarter” identifies the year and annual quarter of the rebate. By way of example, a “20001” in this column means that the reimbursement was paid in the first annual quarter of the year 2000, a “20002” means that the reimbursement was paid in the second annual quarter of the year 2000, and so on. The column entitled, “Rebate Amount” identifies the rebate amount paid by NPC to Nevada Medicaid for the identified drug during the corresponding quarter.

7. Nevada Medicaid received rebates from NPC totaling \$1,838,578.69 during the period January 1, 1997, through June 30, 2003, for the drugs at issue here. These figures were arrived at by totaling the quarterly rebates paid to Nevada

Medicaid by NPC based on NPC's Medicaid rebate data (*i.e.*, the figures in the Rebate Amount column of Exhibit 2).

C. Northern Nevada Adult Mental Health Services' Purchases of NPC Drugs

8. Attached hereto as Exhibit 3 is a spreadsheet created at my direction exhibiting true and accurate prices paid by Northern Nevada Adult Mental Health Services ("Northern Nevada") for certain NPC drugs at issue here and reimbursement amounts paid by Nevada Medicaid to Providers for the same drugs. The Northern Nevada purchase prices for NPC drugs contained in Exhibit 3 are based on NPC's commercial chargeback data produced by NPC to Plaintiff in connection with the above-referenced case. The Nevada Medicaid reimbursement data contained in Exhibit 3 are based on the CMS Data.

9. An explanation of the data that Exhibit 3 contains is as follows. Each row of Exhibit 3, save the header row, reflects an individual purchase by Northern Nevada of an NPC drug at issue here. The column entitled, "Entity" identifies the Nevada state entity that purchased the drug. The column entitled, "NDC" identifies the NDC for the NPC drug that was purchased. The column entitled, "Drug Name" identifies the NPC drug that was purchased by brand name and package size. The column entitled, "Invoice Date" identifies the date that the wholesaler shipped the drug to the Nevada state entity that purchased the drug. This date is expressed in the following format: the first four digits identify the year of the transaction; the next two digits, the month; and the last two digits, the day of the month. By way of example, a "2001-02-26" in the Invoice Date column means that the wholesaler shipped the product on February 26, 2001. The column entitled, "Price" reflects the contract price at which the Nevada state entity purchased the NPC drug. The column entitled, "Quantity" reflects the quantity of the

product that the entity purchased. The column entitled, “Units” reflects the number of units of the drug contained in each package. The column entitled, “Invoice Price Per Unit” reflects the price paid by the Nevada state entity on a per unit basis. Each entry in the Invoice Price Per Unit column is calculated by dividing the entry in the Price column by the figure that results from multiplying the entry in the Quantity column by the entry in the Units column. The column entitled, “Medicaid Reimbursement” reflects the amount that Nevada Medicaid reimbursed per unit (minus the estimated dispensing fee) for the corresponding NPC drug. The column entitled, “Percent of Medicaid Reimbursement” reflects the Nevada state entity’s drug purchase price as a percentage of Nevada Medicaid’s reimbursement amount (paid to Providers) for the same drug. Each entry in the Percent of Medicaid Reimbursement column is calculated by dividing the entry in the Invoice Price Per Unit column by the entry in the Medicaid Reimbursement column.

10. Northern Nevada purchased six NPC drugs at issue here during the period beginning January 1, 1997, through June 30, 2003: Clozaril, Lotensin, Lotensin HCT, Lotrel, Parlodel, and Tegretol. The weighted average of the column entitled, “Percent of Medicaid Reimbursement” establishes that Northern Nevada’s cost of acquiring the six NPC drugs was 89.2 percent of the amount that Nevada Medicaid paid in reimbursement to providers (minus estimated dispensing fees) for the same drugs. This average was weighted according to the total cost of each of Northern Nevada’s purchases.

D. Southern Nevada Adult Mental Health Services’ Purchases of NPC Drugs

11. Attached hereto as Exhibit 4 is a spreadsheet created at my direction exhibiting true and accurate prices paid by Southern Nevada Adult Mental

Health Services (“Southern Nevada”) for certain NPC drugs at issue here and reimbursement amounts paid by Nevada Medicaid to Providers for the same drugs. The Southern Nevada purchase prices for NPC drugs contained in Exhibit 4 are based on NPC’s commercial chargeback data produced by NPC to Plaintiff in connection with the above-referenced case. The Nevada Medicaid reimbursement data contained in Exhibit 4 are based on the CMS Data.

12. An explanation of the data that Exhibit 4 contains is as follows. Each row of Exhibit 4, save the header row, reflects an individual purchase by Southern Nevada of an NPC drug at issue here. The column entitled, “Entity” identifies the Nevada state entity that purchased the drug. The column entitled, “NDC” identifies the NDC for the NPC drug that was purchased. The column entitled, “Drug Name” identifies the NPC drug that was purchased by brand name and package size. The column entitled, “Invoice Date” identifies the date that the wholesaler shipped the drug to the Nevada state entity that purchased the drug. This date is expressed in the following format: the first four digits identify the year of the transaction; the next two digits, the month; and the last two digits, the day of the month. By way of example, a “2001-02-26” in the Invoice Date column means that the wholesaler shipped the product on February 26, 2001. The column entitled, “Price” reflects the contract price at which the Nevada state entity purchased the NPC drug. The column entitled, “Quantity” reflects the quantity of the product that the entity purchased. The column entitled, “Units” reflects the number of units of the drug contained in each package. The column entitled, “Invoice Price Per Unit” reflects the price paid by the Nevada state entity on a per unit basis. Each entry in the Invoice Price Per Unit column is calculated by dividing the entry in the Price column

by the figure that results from multiplying the entry in the Quantity column by the entry in the Units column. The column entitled, "Medicaid Reimbursement" reflects the amount that Nevada Medicaid reimbursed per unit (minus the estimated dispensing fee) for the corresponding NPC drug. The column entitled, "Percent of Medicaid Reimbursement" reflects the Nevada state entity's drug purchase price as a percentage of Nevada Medicaid's reimbursement amount (paid to Providers) for the same drug. Each entry in the Percent of Medicaid Reimbursement column is calculated by dividing the entry in the Invoice Price Per Unit column by the entry in the Medicaid Reimbursement column.

13. Southern Nevada purchased six NPC drugs at issue here during the period beginning January 1, 1997, through June 30, 2003: Clozaril, Lamisil, Lotensin, Tegretol, Tegretol XR, and Trileptal. The weighted average of the column entitled, "Percent of Medicaid Reimbursement" establishes that Southern Nevada's cost of acquiring the six NPC drugs was 85.6 percent of the amount that Nevada Medicaid paid in reimbursement to providers (minus estimated dispensing fees) for the same drugs. This average was weighted according to the total cost of each of Southern Nevada's purchases.

E. NPC Fully Complied With Its Discovery Obligations

14. Plaintiff never filed a motion to compel production against NPC in the above-captioned case.

F. Relevant Documents and Other Materials Cited in NPC's Memorandum and Local Rule 56.1 Statement of Undisputed Facts in Support of NPC's Motion for Summary Judgment

15. Attached hereto as Exhibit 5 is a true and correct copy of *Report of Independent Expert Professor Ernst R. Berndt to Judge Patti B. Saris*, for purposes of the

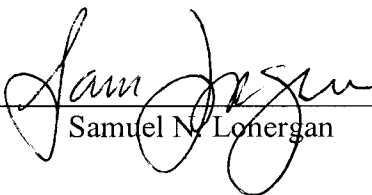
motion for class certification, in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-CV-12257-PBS (D. Mass.).

16. Attached hereto as Exhibit 6 are true and correct copies of pages 1, 9-24, 65-72, and 149-60 of the transcript of Frank J. Arena's deposition, taken on June 27, 2006, in connection with *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-CV-12257-PBS (D. Mass.).

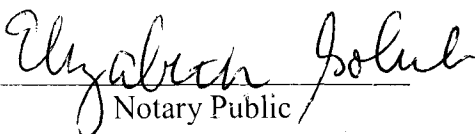
17. Attached hereto as Exhibit 7 are true and correct copies of pages 1, 33-40, and 45-52 of the transcript of Patricia Kay Morgan's deposition, taken on January 11-12, 2005, in connection with *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, Civil Action No. 01-CV-12257-PBS (D. Mass.).

18. Attached hereto as Exhibit 8 are true and correct copies of the relevant sections of Nevada's Deceptive Trade Practices and Medicaid Fraud Acts, including Nev. Rev. Stat. §§ 41.600; 422.450 through 422.590; and 598.0903 through 598.0999.

19. Attached hereto as Exhibit 9 is a true and correct copy of the proposed Settlement Agreement and Release in *New England Carpenters Health Benefit Fund, et al v. First DataBank, Inc.*, Civ. Action No. 1:05-CV-11148-PBS (D. Mass.).


Samuel N. Lonergan

Subscribed and sworn to before me
this 8 day of Feb 2007


Notary Public

ELIZABETH GOLUB
Notary Public, State of New York
No. 4916991

31413459-01000000
Qualified in Nassau County
Certificate Filed in New York County 2005
Commission Expires December 28, 2005